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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/177,902	10/23/1998	DAVID A. HOLMAN	E-1658	3711

7590 03/27/2003
DOUGLAS E. MCKINLEY, JR.
PO BOX 202
RICHLAND, WA 99352

EXAMINER

CINTINS, IVARS C

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 03/27/2003

20

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/177,902

Applicant(s)

Holman et al.

Examiner

Ivars Cintins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Dec 27, 2002
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(e). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(e). _____ 6) ☐ Other:

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-17 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admitted prior art in view of Johncox et al. (U.S. Patent No. 4,750,707). As pointed out in the previous Office Action, Applicant has admitted that column based separations employing a valve member comprising a moveable solid rod are known in the art. Such prior art separation techniques are depicted in Figs. 4a and 4b. Claims 1-17 differ from these admittedly known separation techniques by the use of a valve member having a rotating rod with a "binary" end. Johncox et al. discloses controlling fluid with a valve of the type recited. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the rotating valve of Johncox et al. for the equivalent solid rod valve of the admittedly known system, since this reference rotating valve is capable of controlling material flow through a column chamber in substantially the same manner as the solid rod

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valve of the admittedly known system, to produce substantially the same results. Applicant should note that one of ordinary skill in the fluid treatment art would appropriately size the valve member of the thus modified admittedly known system such that it blocks the flow of matrix material to the outlet in a first position, permits the flow of matrix material to the outlet in a second position, and allows fluid flow to the outlet in all positions, since the admittedly known system depicted in Figs. 4a and 4b clearly requires such a function (see page 7, lines 16-18 of the specification).

Applicant's arguments filed August 19, 2002 have been noted and carefully considered but are not deemed to be persuasive of patentability. Initially, it should be noted that claims 1-17 have only been rejected over Applicant's admitted prior art in view of Johncox et al. Krambrock has only been cited as art of interest, and has not been applied in any rejection against the claims (see pages 3 and 4 of the Office action dated March 29, 2002). Accordingly, Applicant's arguments presented in the above noted response will be treated as they apply to the rejection based on Applicant's admitted prior art in view of Johncox et al.

Applicant argues that since the valve of Johncox et al. does not allow flow of a fluid in all positions, it could not be substituted for the valve in the admittedly known system.

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Applicant further argues that the additional modification necessary to allow this secondary reference valve to function in the admittedly known prior art system is simply proposed by the Examiner "of his own volition." It is pointed out, however, that a valve which blocks the flow of matrix material to the outlet in a first position, permits the flow of matrix material to the outlet in a second position, and allows fluid flow to the outlet in all positions is not something that has merely been proposed by the Examiner, it is something that is required by the admittedly known prior art system. This prior art system employs a valve which allows fluid flow in all valve positions by sizing the seating member of the valve to a tolerance of one half bead diameter (see Fig. 4a; and page 7, lines 16-18 of the specification). Accordingly, upon modification of this prior art system to replace the valve therein with the rotating valve of Johncox et al., the valve seat in this proposed modification would also have to be sized in a similar manner (i.e. with a tolerance of one half bead diameter) in order to produce the required flow capabilities. One of ordinary skill in the fluid handling art would readily recognize this, and could easily handle such a necessary modification.

The Dockendorff affidavit filed August 19, 2002 has also been noted and carefully considered, but is not deemed to be

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persuasive of patentability. This affidavit merely states that solid rod valve based system have known disadvantages, further states that no prior art systems utilize the rotating rod concept, and then presents the conclusion that the rotating rod concept overcomes the drawbacks of the prior art solid rod systems. This affidavit does not, however, present any data (e.g. comparative test data) from which such a conclusion of superior results can be drawn. Mere conclusory statements, unsupported by objective evidence, are entitled to little weight in determining patentability. Cf. *In re Greenfield*, 571 F.2d 1185, 1188, 197 USPQ 227, 229 (CCPA 1978).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the

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statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is (703) 308-3840. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM.

The fax phone numbers for this art unit are: (703) 872-9311 for "Official" faxes after Final Rejection; (703) 872-9310 for all other "Official" faxes; and (703) 872-9492 for "Draft" and other "Unofficial" faxes.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

I. Cintins
March 22, 2003


Ivars C. Cintins
Primary Examiner
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